



1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3 \* \* \*  
4 CIVIL ACTION NO. 01-CV-5681  
5  
6 MERCY HEALTH SYSTEM OF  
7 SOUTHEASTERN PENNSYLVANIA,  
8 Plaintiff,  
9 :  
10 vs. :  
11 CSI FINANCIAL, INC., :  
12 Defendant. :  
13  
14 FIRST NATIONAL BANK OF  
15 MONTANA, INC. AND CSI  
16 FINANCIAL, INC.,  
17 Plaintiffs,  
18 :  
19 vs. :  
20  
21 MERCY HEALTH SYSTEM OF  
22 SOUTHEASTERN PENNSYLVANIA,  
23 Defendant.  
24  
25 \* \* \*  
26 October 14, 2003  
27 \* \* \*  
28  
29 Oral sworn deposition of DOUGLAS  
30 SMITH, held at the law offices of Kittredge,  
31 Donley, Elson, Fullen & Embick, LLP, 421  
32 Chestnut Street, Fifth Floor, Philadelphia,  
33 Pennsylvania, commencing on or about 10:15 a.m.,  
34 before Heather L. Ashton-Chee Wah, Certified  
35 Shorthand Reporter and Notary Public.  
36 \* \* \*

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2  
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28 Attorneys for First National Bank  
29 of Montana, Inc.  
30  
31 ALSO PRESENT:  
32  
33 -Russell Erdman, Designated Rep. Of Mercy  
34 (present after lunch)  
35 \* \* \*

1 (It is hereby stipulated by and  
2 between counsel that all  
3 objections, except as to the form  
4 of the question, be reserved until  
5 the time of trial)  
6 DOUGLAS SMITH, having been duly sworn,  
7 was examined and testified as follows:  
8 EXAMINATION OF MR. SMITH BY MR. DAY:  
9 Q. Good morning, Mr. Smith. My name is  
10 Christopher Day, I represent First National Bank  
11 of Montana in a litigation which also involves  
12 Mercy Health System of Southeastern  
13 Pennsylvania.  
14 Before we begin your deposition I'd like  
15 to give you a few instructions. Please allow me  
16 to finish the question before you begin your  
17 answer, because we have a court reporter sitting  
18 to your left who is taking down everything we  
19 say and she can't take both of our statements  
20 down at the same time. I will certainly accord  
21 you the same courtesy.  
22 A. Okay.  
23 Q. If you have a... an answer that's yes or  
24 no answer, rather than shaking your head or

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1 A. I first heard of CSI Financial when I got  
2 a marketing letter from a fellow by the name of  
3 Pete Parsons.  
4 Q. When was that?  
5 A. Well, it was sometime after -- we had  
6 just moved to our new building, that one in  
7 Conshohocken, in August of '99. So it was some  
8 point after we moved that I got the letter.  
9 Q. Okay.  
10 A. I don't remember the exact day or date  
11 that I got it, but --  
12 Q. You received the letter?  
13 A. -- we moved in in mid August of '99.  
14 Q. Okay. And you received the letter?  
15 A. I did receive a letter, although I can't  
16 remember whether it was directed to me or just  
17 generically directed to the CFO. But there was  
18 a marketing letter that came to Mercy from Pete  
19 Parsons at CSI.  
20 Q. And did you speak with anybody at Mercy  
21 regarding this marketing letter, or CSI?  
22 A. Excuse me, Chris. Do you mean -- at what  
23 point?  
24 Q. After receiving this letter.

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1 A. Well, certainly we had a conversation at  
2 some point, but I don't remember when we had a  
3 conversation about it.  
4 Q. When you say we, who do you mean?  
5 A. Well, I would have discussed it with my  
6 superior. I reported to Joe Bradley who's our  
7 CFO.  
8 Q. Joe Bradley?  
9 A. Joe Bradley.  
10 Q. All right. And do you remember when you  
11 had a conversation with Mr. Bradley about this?  
12 A. What date or --  
13 Q. Yeah, approximately.  
14 A. Approximately? No, I don't remember.  
15 Q. Okay. Well, tell me then, give me your  
16 recollection of your involvement from the time  
17 you received this letter to signing the  
18 agreement with -- between CSI and Mercy and the  
19 bank.  
20 A. Well, as I said, I received the marketing  
21 letter. I thought the concept was very unique  
22 and interesting because I had never seen any  
23 marketing material for a vendor who did work  
24 like that, did financing for patient pay

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1 receivable. So I was very intrigued by it. And  
2 at some point after receiving the letter I did  
3 place a call to Pete Parsons to try to find out  
4 about the program.  
5 Q. And what did you and Mr. Parsons discuss?  
6 A. Well, it was a general overview of the  
7 program and how it worked. I was very intrigued  
8 during the telephone call because Pete explained  
9 to me that one of the things that they did to  
10 qualify people for the program was to run an  
11 Equifax credit report and score the credit  
12 reports with a Beacon score, and that they had  
13 to qualify with a minimum Beacon score of 600 to  
14 qualify for the program. Now, I thought that  
15 that concept was intriguing. And the reason  
16 that I was so intrigued by it was that the  
17 Beacon score is, in the marketplace, a predictor  
18 of whether you're going to pay your bills or  
19 not. And it was the first time I had ever seen  
20 a vendor who used the Beacon score as a  
21 predictor of whether a patient was going to pay  
22 a bill or not.  
23 Pete indicated that they had a number of  
24 clients out in the western part of the United

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1 States where they were very successful using  
2 these Beacon scores to predict whether patients  
3 would pay bills, and I just thought that the  
4 whole thing was really intriguing. That's  
5 pretty much what I came away with from that  
6 conversation.  
7 Q. Okay. Did Mr. Parsons discuss CSI's role  
8 in provided financing during that conversation?  
9 A. Well, the letter did say that we would  
10 finance your patient receivable, and Pete  
11 indicated that they would purchase anybody with  
12 a Beacon score in excess of 600. But I don't  
13 recall that Pete got specific about the source  
14 of the financing, just that they scored the  
15 patient receivable and they bought ones,  
16 accounts, that had a Beacon score in excess of  
17 600.  
18 Q. Okay. And --  
19 A. It was a really sort of high level  
20 conversation that probably lasted maybe 10  
21 minutes.  
22 Q. And what did you do from there with  
23 regard to CSI?  
24 A. Well, I was really intrigued, as I said,

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1 after talking to Pete on the phone. And at the  
 2 next opportunity that I had to talk to Joe, I  
 3 took the letter and the concept to him what I  
 4 learned on the telephone.  
 5 Q. All right. And what did Joe say about  
 6 it?  
 7 A. He said look into it.  
 8 Q. And so did you look into it?  
 9 A. Well, at some point I did call Pete back  
 10 and he came out to Mercy, to Conshohocken, and  
 11 had a meeting with a bunch of us from the  
 12 finance department and we talked about the  
 13 program.  
 14 Q. And who came out to Conshohocken?  
 15 A. From CSI?  
 16 Q. Yes.  
 17 A. Just Pete.  
 18 Q. Just Pete?  
 19 A. Yeah.  
 20 Q. And who did he meet with at Conshohocken?  
 21 A. It was me, Russ Erdman, Joe Bradley, a  
 22 fellow by the name of Mike Glitz and Vince  
 23 Ewing. That was it at the meeting.  
 24 Q. You said Mike Glick?

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1 A. Glitz, G-L-I-T-Z.  
 2 Q. And who was the final person?  
 3 A. Vince Ewing, E-W-I-N-G.  
 4 Q. All right. What was Mr. Ewing's position  
 5 at Mercy?  
 6 A. At the time, Vince was in the director  
 7 role, director of patient accounts.  
 8 Q. Did he report directly to you?  
 9 A. Yes.  
 10 Q. Okay. Did he continue in that role  
 11 through 2001?  
 12 A. He continued in that role through, yeah,  
 13 through 2001.  
 14 Q. Okay. How about Mr. Glitz, what was his  
 15 position with Mercy?  
 16 A. His -- Mike's title is manager of patient  
 17 accounts.  
 18 Q. Who is the manager of patient accounts  
 19 today?  
 20 A. Pardon?  
 21 Q. What is the -- what are the  
 22 responsibilities of the manager of patient  
 23 accounts, generally?  
 24 A. Generally, all of the billing,

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1 collection, claims scrubbing, electronic  
 2 billing, patient phone calls. I think that  
 3 generally covers it.  
 4 Q. Okay. And what was Mr. Erdman's  
 5 position?  
 6 A. Russ is manager of system support for  
 7 patient accounts.  
 8 Q. You say is. Is that what his position  
 9 with the hospital was back at the time of this  
 10 meeting?  
 11 A. Yes.  
 12 Q. And is that still his position?  
 13 A. That is still his position, yes.  
 14 Q. Okay. And what occurred at the meeting?  
 15 A. Well, Pete came in from Montana and  
 16 basically went through the program again,  
 17 repeated a lot of what we talked about on the  
 18 telephone in terms of how they get an account  
 19 and create a file with Equifax and get a Beacon  
 20 score, and then that they provide financing that  
 21 they will buy accounts that have a Beacon score  
 22 in excess of 600, that we would receive 92 cents  
 23 on the dollar for the self-pay accounts that had  
 24 a Beacon score of greater than 600, that the

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1 accounts that scored less than 600 would be  
 2 returned to us, and then we would just follow  
 3 whatever normal collection routine we pretty  
 4 much already had in place.  
 5 Q. Was it your understanding that CSI would  
 6 determine what the Beacon score was for each  
 7 account?  
 8 A. Well, actually, CSI doesn't determine the  
 9 Beacon score. The Beacon score is part of your  
 10 Equifax credit file.  
 11 Q. And --  
 12 A. So what actually happens is that we send  
 13 a file to CSI and then CSI uses the Equifax  
 14 credit report to grab the Beacon score out of  
 15 that credit report.  
 16 Q. When you send a file to CSI, would that  
 17 include the Equifax credit report?  
 18 A. No.  
 19 Q. All right. So CSI would get the Equifax  
 20 credit report?  
 21 A. Correct.  
 22 Q. Okay. Okay. What else was discussed?  
 23 A. I think in general, that was it. It was  
 24 basically an overview of the program and how it

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1 worked; how we would send a file, how they would  
 2 score it, how they would report back to us the  
 3 accounts that didn't qualify. And they made it  
 4 sound very, very simple, very user friendly, and  
 5 then within a couple days we'd have a check for  
 6 92 cents for all the accounts that qualified.  
 7 Q. Did you have an understanding from that  
 8 meeting that CSI would receive eight percent on  
 9 each account?  
 10 A. I don't remember what my understanding  
 11 was from that meeting, no.  
 12 Q. Okay. Did you have an understanding as  
 13 to from where the payments would come for  
 14 purchasing these accounts?  
 15 A. From that meeting?  
 16 Q. Yes.  
 17 A. I would have to say that from that  
 18 meeting I didn't have a specific understanding  
 19 where exactly the money came from, just that CSI  
 20 had a financing source.  
 21 Q. Okay. So what happened after that  
 22 meeting?  
 23 A. Well, after that meeting, at some point  
 24 in time Joe Bradley and I would -- had a meeting

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1 or discussion about the meeting with Pete  
 2 Parsons and he asked for my thoughts. I told  
 3 him that I thought it was an intriguing concept  
 4 because they had a method of purchasing accounts  
 5 that had a high probability of being paid and  
 6 that it was, you know, what seemed to me to be a  
 7 logical and sound business decision to at least  
 8 look into it.  
 9 Q. And what was Mr. Bradley's response to  
 10 that?  
 11 A. His response to it was Doug, if you think  
 12 it's a good idea, you should hop on a plane and  
 13 go out to Montana.  
 14 Q. And is that what you did?  
 15 A. That is what I did.  
 16 Q. Okay. And what did you do out in  
 17 Montana? Did you go alone or did you take  
 18 somebody with you?  
 19 A. No. I did go alone.  
 20 Q. Okay.  
 21 A. Yeah.  
 22 Q. And what did you do; where did you go?  
 23 A. Well, I went in October to Helena.  
 24 Q. October of '99?

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1 A. October of '99. And went to... I'm  
 2 trying to even think how long I was there. It  
 3 was a relatively short time. I think I arrived  
 4 on a Sunday afternoon and by Monday afternoon I  
 5 was probably on my way home. So I was there a  
 6 relatively short period of time. And while I  
 7 was there I visited -- no. I'm sorry. Let me  
 8 amend that. I went out on a Sunday night, I  
 9 think, and came back on a Tuesday morning.  
 10 Q. Okay. What did you do while you were out  
 11 there?  
 12 A. Well, I didn't do anything on Sunday. I  
 13 collapsed in my hotel room. But on Monday  
 14 morning Pete Parsons met me at my hotel and  
 15 picked me up rather early, it was probably about  
 16 8:00 in the morning, and then we went, headed  
 17 over to the CSI offices in Helena. And when I  
 18 got to the CSI offices I was introduced to Cindy  
 19 Dorr who I think is either the controller or in  
 20 a position in the accounting department; a guy  
 21 named Rob Logsdon who is -- was -- I don't know  
 22 Rob's exact title, but he was represented to me  
 23 as the computer expert. I did meet the owner  
 24 named Bob Jaeb and got a tour of the facility.

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1 I probably met a couple other folks who I don't  
 2 remember their names anymore, probably some  
 3 customer service people, saw the layout of the  
 4 office and basically heard a little bit more  
 5 about the program.  
 6 At lunchtime I was taken out to lunch,  
 7 and I think that I was accompanied by Pete,  
 8 Cindy, Rob and we met a fellow from the Bank of  
 9 Montana whose name was Scott, but I can't  
 10 remember his last name. It was something like  
 11 Scott Lenahan or... but Scott, I remember his  
 12 name.  
 13 Q. Does Lenaberg ring a bell?  
 14 A. I know it started with an L, but...  
 15 Q. Okay. So this trip to CSI in October of  
 16 '99, was this your due diligence trip on the --  
 17 was it your due diligence visit on CSI?  
 18 MR. WILLIAMS: Objection to form.  
 19 Go ahead and answer.  
 20 A. Well -- and actually, I never used the  
 21 word due diligence, but I would not have felt  
 22 comfortable recommending to my boss that we  
 23 enter into an arrangement with a vendor whom I  
 24 had never seen. We just wouldn't do it. For



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1 Q. Okay. So nobody in your department then  
2 had prior experience with purchasing back  
3 accounts from a vendor?  
4 A. That would be true because this was the  
5 first experience we had been working with a  
6 company like CSI that purchased receivables.  
7 Q. Okay.  
8 MR. DAY: Ron, can you hand me the  
9 Patient Financing Agreement to your  
10 right? Thank you.  
11 BY MR. DAY:  
12 Q. Do you have an understanding, Mr. Smith,  
13 as to what Mercy's responsibility was for  
14 re-purchasing recourse accounts?  
15 MR. WILLIAMS: Objection to form.  
16 Go ahead and answer.  
17 A. Will you show me in the document what  
18 you're referring to.  
19 Q. Well, I'm not referring to the document  
20 quite yet. I just want to see if you have an  
21 independent recollection or understanding of  
22 that.  
23 A. Are you talking about recourse accounts?  
24 Q. Yes.

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1 A. Or returns?  
2 Q. Recourse accounts.  
3 A. I have an understanding, I think.  
4 Q. Okay. Can you tell me what that is?  
5 MR. WILLIAMS: Objection to form.  
6 Go ahead and answer.  
7 A. At the end of every month we were to be  
8 presented with a file of accounts that were 90  
9 days delinquent for a recourse. We owed 92  
10 cents back on the dollar for -- actually, the  
11 same amount that we received, which would have  
12 been 92 cents on the dollar, back to the Bank of  
13 Montana. The other eight percent was owed back  
14 by CSI so that the bank was made whole for the  
15 \$1 that we financed.  
16 Q. Okay. And would Mercy repay that 92  
17 cents on the dollar back directly to the bank?  
18 A. Well, these were offset against new  
19 files.  
20 Q. Okay. So Mercy would or would not pay  
21 the 92 cents on the dollar to the bank?  
22 MR. WILLIAMS: Objection to form.  
23 Go ahead and answer.  
24 BY MR. DAY:

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1 Q. You can answer.  
2 MR. WILLIAMS: You can answer.  
3 THE WITNESS: Oh, okay.  
4 A. Yeah, we would.  
5 Q. And that payment came in different forms,  
6 as I understand you're saying. Sometimes it  
7 came in offsetting additional files that you  
8 would send to CSI?  
9 MR. WILLIAMS: Objection to form.  
10 Go ahead and answer.  
11 A. Yes.  
12 Q. Okay. And it would also come in the form  
13 of cash or a wire transfer?  
14 MR. WILLIAMS: Objection to form.  
15 Go ahead, answer.  
16 A. There were either checks or wire  
17 transfers that we made at some point during the  
18 course of the program where there weren't enough  
19 offsets.  
20 Q. When you say Mercy was to re-purchase  
21 accounts that were 90 days delinquent, what do  
22 you mean by 90 days delinquent?  
23 A. I define 90 days delinquent as 90 days  
24 into the program with no payment.

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1 Q. What do you mean by 90 days in the  
2 program delinquent?  
3 A. From the date it was purchased by CSI to  
4 the 90th day, if it was in their program and  
5 they did not collect any money, that was -- that  
6 should have been recouped back to us, 90 days  
7 delinquent.  
8 Q. And when should that have been recouped  
9 back to you?  
10 A. We were supposed to get a file at the end  
11 of every month with accounts that were 90 days  
12 old, 90 days delinquent. It's pretty simple.  
13 Every month.  
14 Q. All right. And when you say you were  
15 supposed to get a file with accounts that were  
16 90 days delinquent, is it your understanding  
17 that you were supposed to receive an account on  
18 the 90th day of delinquency?  
19 A. Well, the moment an account hit 90 days  
20 old and it had not had a payment, in my mind  
21 that was a delinquent account. And at the next  
22 scheduled recourse file, that should come --  
23 that account should come back to us every month.  
24 Q. So if an account had 90 days delinquency,

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1 the 90th day being June 1st, and if the next  
 2 scheduled recourse file was scheduled to come to  
 3 you June 30th, then it's your understanding that  
 4 that account that became delinquent 90 days on  
 5 June 1st would be returned to you with the file  
 6 on June 30th?

7 MR. WILLIAMS: Objection to form.  
 8 Go ahead, answer.

9 A. Assuming that we got a recourse file on  
 10 May 31st with 90 day delinquent accounts.  
 11 However, on June -- on May 31st the account in  
 12 question was 89 days old, it would not have  
 13 qualified to be a recourse account because it  
 14 wasn't 90 days old. Therefore, at the next  
 15 scheduled recourse file, which would be June  
 16 30th, we should see that account on the file,  
 17 presuming that there had been no payments.

18 Q. Now, if an account at the time of  
 19 purchase -- from the time of purchase by the  
 20 bank were paid each month by the patient and  
 21 were paid for any... let's say for an entire  
 22 year and then the patient stopped payment, would  
 23 you consider the period of delinquency to begin  
 24 the first date the payment... the first payment

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1 was not received?

2 A. I consider any 90-day period, any period  
 3 of 90 consecutive days without a payment, to be  
 4 delinquent.

5 Q. And what was the process for returning  
 6 recourse accounts to Mercy?

7 MR. WILLIAMS: Objection to form.  
 8 Go ahead and answer.

9 A. We were supposed to receive a file at the  
 10 end of every month with accounts that were 90  
 11 days old for recourse. That was the  
 12 expectation.

13 Q. When you say an account that was 90 days  
 14 old, you don't mean 90 days old from the time --  
 15 I'm sorry.

16 A. 90 consecutive days without payment.

17 Q. Okay. You don't mean 90 days from the  
 18 time it was purchased, you mean 90 consecutive  
 19 days from the first time there was a payment  
 20 missed until the 90th day?

21 MR. WILLIAMS: Objection to form.  
 22 Go ahead and answer.

23 BY MR. DAY:  
 24 Q. Is that correct?

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1 I'm not trying to trick you, I'm trying  
 2 to get a firm understanding here.

3 A. I'm trying to give it to you, Chris.  
 4 Anytime an account went for 90 days without a  
 5 payment, as soon as we hit the 90th day, that  
 6 account should be recoured back to us.

7 Q. And that 90 days was measured from the  
 8 first time a payment was missed until the 90th  
 9 day thereafter?

10 A. Either -- any period of 90 consecutive  
 11 days without a payment.

12 Q. Well --

13 A. Okay. So let me just illustrate. You  
 14 make a payment on May 31st, then for the next 90  
 15 consecutive days you do not make a payment. We  
 16 now have a block of time of 90 days with no  
 17 payment. I want the account back as a recourse.

18 Q. Why do you want the account back?

19 A. Because there have been 90 consecutive  
 20 days without a payment. I want it back. That's  
 21 90 days delinquent in my mind.

22 Q. Okay. And is this procedure spelled out  
 23 within the contract, the Patient Findings  
 24 Agreement that has been marked as Smith-1? I'm

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1 going to hand you that agreement to review.

2 A. I see it spelled out on page three,  
 3 paragraph seven.

4 Q. And what are the responsibilities of the  
 5 bank, according to paragraph seven?

6 MR. WILLIAMS: Objection to form.  
 7 Go ahead and answer.

8 A. Well, let me read the paragraph again.  
 9 Well, let me just -- if I could, Chris, let me  
 10 take the whole contract as a whole rather than  
 11 picking out a certain sentence in a paragraph.

12 Q. Well, I'm asking you what the bank's  
 13 responsibilities are to this particular  
 14 paragraph, paragraph seven, which you said  
 15 defines the recourse obligations.

16 A. Right. The responsibility is, to us, is  
 17 that every month, at the end of each calendar  
 18 month which the bank or CSI holds an account,  
 19 CSI will automatically present to the provider  
 20 for re-purchase accounts that are delinquent for  
 21 90 days.

22 Q. Okay.

23 A. Now, in my mind, if I read the entire  
 24 contract as a whole, I'm also looking at